

REMARKS

This Amendment is being filed in response to the Final Office Action mailed July 10, 2008, which has been reviewed and carefully considered. Entry of the present amendment and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1, 4-14 and 16 remain in this application, where claim 3 has been canceled by this amendment without prejudice. Applicants reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

In the Final Office Action, the Examiner objected to the specification for lacking headings. Applicant respectfully declines to add the headings as they are not required in accordance with MPEP §608.01(a), and could be inappropriately used in interpreting the specification.

Section headings are not statutorily required for filing a non-provisional patent application under 35 USC 111(a), but per 37 CFR 1.77 are only guidelines that are suggested for applicant's use. (See Miscellaneous Changes in Patent Practice, Response to

comments 17 and 18 (Official Gazette, August 13, 1996) [Docket No: 950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77").

It is respectfully submitted that "should" as recited in MPEP §608.01(a) is suggestive or permissive, and not mandatory as in "must" or "shall". For example, 37 CFR 1.77(b) recites:

The specification should include the following sections in order: (Emphasis added)

Similarly, 37 CFR 1.77(c) recites:

The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type. (Emphasis added)

By contrast, 37 CFR 1.77(b)(5) recites:

(5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified. (Emphasis added)

Thus, it is respectfully submitted that a distinction is made between "should" and "shall", where "should" is permissive, and

"shall" is mandatory. Accordingly, it is respectfully submitted that headings are not required in accordance with MPEP §608.01(a), and withdrawal of the objection to the specification is respectfully requested.

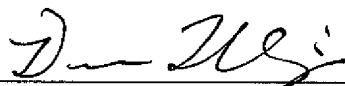
In the Final Office Action, the Examiner indicated that claims 3-5, 7-8 and 10 would be allowable if rewritten in independent form. Applicants gratefully acknowledge the indication that claims 3-5, 7-8 and 10 contain patentable subject matter. By means of the present amendment, independent claim 1 and 14 have been amended to include the features of allowable claim 3 without including certain features that are believed to be not necessary for patentability, and claim 3 has been canceled without prejudice. In addition, claims 7 and 10 have been rewritten in independent form without including certain features that are believed to be not necessary for patentability.

Accordingly, it is respectfully submitted that independent claims 1, 7, 10 and 14 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 4-13 and 16 should also be allowed at least based on their dependence from amended independent claims 1 and 7.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 

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